

MAIL TO:

STATE OF UTAH
 DIVISION OF PURCHASING
 3150 STATE OFFICE BUILDING, STATE CAPITOL
 P.O. BOX 141061
 SALT LAKE CITY, UTAH 84114-1061
 TELEPHONE (801) 538-3026
<http://www.purchasing.state.ut.us>

Request for ProposalSolicitation Number: **RM3108**Due Date: **04/01/03 at 3:00 P.M.**

Date Sent: March 11, 2003

Agency Contract

Goods and services to be
 purchased:

CONSULTING SERVICES**Please complete**

Company Name		Federal Tax Identification Number	
Ordering Address	City	State	Zip Code
Remittance Address (if different from ordering address)	City	State	Zip Code
Type <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Proprietorship <input type="checkbox"/> Government	Company Contact Person		
Telephone Number (include area code)	Fax Number (include area code)		
Company's Internet Web Address	Email Address		
Discount Terms (for bid purposes, bid discounts less than 30 days will not be considered)	Days Required for Delivery After Receipt of Order (see attached for any required minimums)		
<p>The following documents are included in this solicitation: Solicitation forms, instructions and general provisions, and specifications. <u>Please review all documents carefully before completing.</u></p> <p>The undersigned certifies that the goods or services offered are produced, mined, grown, manufactured, or performed in Utah. Yes ____ No _____. If no, enter where produced, etc. _____</p>			
Offeror's Authorized Representative's Signature		Date	
Type or Print Name		Position or Title	

**STATE OF UTAH
DIVISION OF PURCHASING**

Request for Proposal

Solicitation Number: RM3108

Due Date: 04/01/03

Vendor Name:

CONSULTING SERVICES TO ASSIST THE COMMITTEE OF CONSUMER SERVICES IN THE ANALYSIS OF PACIFICORP'S PROPOSED DEMAND-SIDE MANAGEMENT TARIFF SCHEDULE PER THE SPECIFICATIONS WHICH CAN BE ACCESSED AT

www.purchasing.state.ut.us/bidprocessing/currentbids.asp.

WITH PURCHASING QUESTIONS OR CLARIFICATION PLEASE CONTACT ROSELLE MILLER AT 801-538-3232.

REFERENCE RX: 670 3JAM0000018

REQUEST FOR PROPOSAL - INSTRUCTIONS AND GENERAL PROVISIONS

1. **PROPOSAL PREPARATION:** (a) All prices and notations must be in ink or typewritten. (b) Price each item separately. Unit price shall be shown and a total price shall be entered for each item bid. (c) Unit price will govern, if there is an error in the extension. (d) Delivery of services as proposed is critical and must be adhered to. (e) Incomplete proposals may be rejected. (f) This proposal may not be withdrawn for a period of 60 days from the due date. (g) Where applicable, all proposals must include complete manufacturer's descriptive literature. (h) By signing the proposal the offeror certifies that all of the information provided is accurate, that they are willing and able to furnish the item(s) specified, and that prices offered are correct.

2. **SUBMITTING THE PROPOSAL:** (a) The proposal must be signed in ink, sealed, and if mailed, mailed in a properly-addressed envelope to the DIVISION OF PURCHASING, 3150 State Office Building, Capitol Hill, Salt Lake City, UT 84114-1061. **The "Solicitation Number" and "Due Date" must appear on the outside of the envelope.** (b) Proposals, modifications, or corrections received after the closing time on the "Due Date" will be considered late and handled in accordance with the Utah Procurement Rules, section 3-209. (c) **Your proposal will be considered only if it is submitted on the forms provided by the state. Facsimile transmission of proposals to DIVISION will not be considered.** (d) All prices quoted must be both F.O.B. Origin per paragraph 1.(c) and F.O.B. Destination. Additional charges including but not limited to delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, costs of bonds, or for any other purpose must be included in the proposal for consideration and approval by the Division of Purchasing & General Services (DIVISION). Upon award of the contract, the shipping terms will be F.O.B. Destination, Freight Prepaid with freight charges to be added to the invoice unless otherwise specified by the DIVISION. No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, costs of bonds, or for any other purpose will be paid by the state unless specifically included in the proposal and accepted by DIVISION. (e) By signing the proposal the offeror certifies that all of the information provided is accurate and that he/she offers to furnish materials/services for purchase in strict accordance with the requirements of this proposal including all terms and conditions.

3. **BONDS:** The state has the right to require a bid or proposal bond, payment bond and/or a faithful performance bond from the offeror in an amount not to exceed the amount of the contract.

4. **PROPRIETARY INFORMATION:** Suppliers are required to mark any specific information contained in their bid which is not to be disclosed to the public or used for purposes other than the evaluation of the bid. Each request for non-disclosure must be accompanied by a specific justification explaining why the information is to be protected. Pricing and service elements of any proposal will not be considered proprietary. All material becomes the property of the state and may be returned only at the state's option. Proposals submitted may be reviewed and evaluated by any persons at the discretion of the state.

5. **BEST AND FINAL OFFERS:** Discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements. Prior to award, these offerors may be asked to submit best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by a competing offeror.

6. **SAMPLES:** Samples, brochures, etc., when required, must be furnished free of expense to the state and if not destroyed by tests may, upon request made at the time the sample is furnished, be returned at the offeror's expense.

7. **DIVISION APPROVAL:** Contracts written with the State of Utah, as a result of this proposal, will not be legally binding without the written approval of the Director of the DIVISION.

8. **AWARD OF CONTRACT:** (a) The contract will be awarded with reasonable promptness, by written notice, to the lowest responsible offeror whose proposal is determined to be the most advantageous to the state, taking into consideration price and evaluation factors set forth in the RFP. No other factors or criteria will be used in the evaluation. The contract file shall contain the basis on which the award is made. Refer to Utah Code Annotated 65-56-21. (b) The DIVISION can reject any and all proposals. And it can waive any informality, or technicality in any proposal received, if the DIVISION believes it would serve the best interests of the state. (c) Before, or

after, the award of a contract the DIVISION has the right to inspect the offeror's premises and all business records to determine the offeror's ability to meet contract requirements. (d) The DIVISION will open proposals publicly, identifying only the names of the offerors. Proposals and modifications shall be time stamped upon receipt and held in a secure place until the due date. After the due date, a **register** of proposals shall be established. The **register** shall be open to public inspection, but the proposals will be seen only by authorized DIVISION staff and those selected by DIVISION to evaluate the proposals. The proposal(s) of the successful offeror(s) shall be open for public inspection for 90 days after the award of the contract(s). (e) Utah has a reciprocal preference law which will be applied against bidders bidding products or services produced in states which discriminate against Utah products. For details see Section 63-56 20.5 -20.6, Utah Code Annotated.

9. **ANTI-DISCRIMINATION ACT:** The offeror agrees to abide by the provisions of the Utah Anti-discrimination Act, Title 34 Chapter 35, U.C.A. 1953, as amended, and Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities. Also offeror agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the workplace. Vendor must include this provision in every subcontract or purchase order relating to purchases by the State of Utah to insure that the subcontractors and vendors are bound by this provision.

10. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah applies to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgement to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

11. **DEBARMENT:** The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by the STATE.

12. **GOVERNING LAWS AND REGULATIONS:** All State purchases are subject to the Utah Procurement Code, Title 63, Chapter 56 Utah Code Annotated 1953, as amended, and the Procurement Rules as adopted by the Utah State Procurement Policy Board (Utah Administrative Code Section R33). These are available on the Internet at www.purchasing.state.ut.us.

(Revision 2/14/2000 - RFP.Instructions)



State of Utah

DEPARTMENT OF COMMERCE
Committee of Consumer Services

REQUEST FOR PROPOSALS

**CONSULTING SERVICES TO ASSIST
THE COMMITTEE OF CONSUMER SERVICES IN
THE ANALYSIS OF PACIFICORP'S PROPOSED
DEMAND-SIDE MANAGEMENT TARIFF SCHEDULE**

10 March 2003

Roger J Ball
Director
Committee of Consumer Services

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ATTACHMENT A

Standard Terms and Conditions

ATTACHMENT B

Special Terms and Conditions

1 PURPOSE

The Committee of Consumer Services (the Committee) has a statutory mandate to represent the interests of small business, farming, ranching, and residential utility customers in proceedings before the Public Service Commission of Utah (the Commission). The Committee is issuing this Request For Proposals (RFP) to retain an expert to assist in analyzing PacifiCorp's (the Company's) proposed Demand-Side Management (DSM) Electric Service Schedule 191 (Schedule) and DSM programs instituted under the DSM Schedule. The Committee is particularly interested in the potential impacts of the DSM Schedule on the Company's small business, farming, ranching, and residential customers in Utah.

2 BACKGROUND

- 2.1 In 1988, the Public Service Commission of Utah (Commission) authorized a merger between Utah Power & Light and PacifiCorp. On 23 November 1999, the Commission approved a merger between PacifiCorp and ScottishPower. ScottishPower continues to conduct business under the names of PacifiCorp and Utah Power. ScottishPower, an international energy business headquartered in Glasgow, Scotland, provides utility service to some 4 million customers in the United Kingdom.
- 2.2 PacifiCorp, a multi-jurisdictional utility subject to regulation in six states as well as by FERC, is headquartered in Portland, Oregon. The Company serves almost 1.5 million electricity customers in California, Idaho, Oregon, Utah, Washington, and Wyoming. Salt Lake City serves as the regional main office for the Utah Division, which operates as Utah Power, and represents 39% of PacifiCorp's business. PacifiCorp is the major power provider in the State of Utah, serving over 75% of Utah's retail electricity users.
- 2.3 During its 2002 General Session, the Utah Legislature enacted Senate Bill 152, authorizing the Commission to approve a tariff that allows for a line-item surcharge (surcharge) on customers' bills to recover costs incurred for DSM.
- 2.4 On 31 October 2002, PacifiCorp filed an application for approval of a Schedule to recover costs incurred for its DSM programs, and asking the Commission establish policies and procedures to implement DSM cost recovery effective 1 January 2004.
- 2.5 PacifiCorp asks that a uniform percentage surcharge be applied to each of several rate schedules listed in its proposed DSM Schedule. It asks the Commission to agree that the surcharge should be set at a level that will allow PacifiCorp to recover, over a twelve-month period, one-third of the balance accrued from August 2001 to 31 December 2003 in its DSM account, plus the projected level of 2004 DSM expenditures.

- 2.6 Alternatively, the Company suggests a simple historical recovery method, provided that the 31 December 2003 balance is recovered over a reasonable period, and that the DSM Schedule can be adjusted frequently outside general rate cases.
- 2.7 No later than September 2003, PacifiCorp proposes to calculate and file the initial percentage surcharge required for DSM cost recovery. The surcharge would take effect on 1 January 2004. PacifiCorp further proposes that customers on specified schedules who use more than 20 GWh may self-direct their own energy efficiency projects and receive a credit offset of up to 75% of their surcharges.
- 2.8 Over the past few months, intervening parties have met with PacifiCorp to discuss the DSM Schedule. A tentative schedule has been put in place requiring PacifiCorp to file testimony on 11 April 2003, with intervening parties filing on 20 June 2003. The purpose of this RFP is to provide the Committee with a thorough analysis of the proposed DSM Schedule and the DSM programs that would qualify for cost recovery under it, in order to make recommendations to the Commission regarding its impact on small business, farming, ranching and residential customers in Utah.

3 ISSUES TO BE EXAMINED

- 3.1 Analysis of PacifiCorp's Proposed DSM Schedule
 - 3.1.1 Examine the accuracy and reasonableness of PacifiCorp's proposed DSM Schedule. Based on independent analysis, the consultant should be prepared to provide information and recommendations on the:
 - implementation process; and
 - cost recovery mechanism.
 - 3.1.2 Regarding DSM nationally, the consultant should be knowledgeable on what has occurred, and is occurring, at state and federal levels. The consultant should be prepared to provide information on:
 - federal legislation;
 - how programs in other states are designed;
 - their demonstrated effectiveness; and
 - mechanisms for cost recovery.

3.1.3 Based on PacifiCorp's intent to allow self-directed programs, the consultant should be prepared to participate in the development of rules and guidelines regarding the following:

who should be able to participate in such programs;

who will measure the energy and demand savings from such programs;

how they should be measured; and

what level of credit should be allowed.

3.1.4 Since electricity usage in Utah peaks during the summer, the Committee is particularly interested in programs that reduce this peak. The consultant will examine what impact the proposed programs are likely to have on summer peak usage.

3.1.5 The consultant will also review proposed programs for the reasonableness of:

design and proposed implementation;

PacifiCorp's assertions regarding claimed costs and benefits; and
criteria for judging the effectiveness of programs.

3.1.6 Subsequent to the implementation of the programs, PacifiCorp will review the programs and provide an assessment to regulators and other interested parties. The consultant will be asked to perform an independent evaluation to determine the following:

if the implemented program followed the proposed plan;

if deviations occurred, were they reasonable;

whether the pre-determined criteria for evaluation were utilized;

the reasonableness of PacifiCorp's review and assessment; and

the level of DSM program costs that should be allowed recovery through the DSM Schedule.

3.2 Other Areas

Offerors are invited to propose other areas in which they may be able to assist the Committee.

4 WORK TO BE PERFORMED

4.1 Phase I

- 4.1.1 In concert with Committee staff, begin analysis.
- 4.1.2 Participate in technical conferences, in person or by conference call, as requested by the Committee project manager.
- 4.1.3 Review analysis and reports advanced by PacifiCorp, the Utah Division of Public Utilities (the Division) and all other intervenors.
- 4.1.4 Develop discovery questions as necessary.
- 4.1.5 Provide written input to Committee staff regarding analyses, conclusions and recommendations.
- 4.1.6 As directed by the project manager, provide a report for the Commission regarding the Committee's analysis, conclusions and recommendations.

4.2 Phase II

- 4.2.1 In the event that the consultant is required to testify - prepare and submit to Committee staff written direct testimony not less than four working days prior to the filing deadline.
- 4.2.2 Prepare and submit to Committee staff written rebuttal testimony (if necessary) not less than two working days prior to the filing deadline.
- 4.2.3 Participate in settlement negotiations (as directed by project manager).
- 4.2.4 Testify at hearings and undergo cross-examination by PacifiCorp, Division and other intervenor attorneys (if necessary).
- 4.2.5 Assist the Committee's attorney with cross-examination of relevant PacifiCorp, Division and other intervenor witnesses (if necessary).
- 4.2.6 Assist with case briefs (if necessary).
- 4.2.7 Review the Commission's final order. Participate in discussions that may result in appeal of the issues addressed in the order. Prepare a written exit review of the case (if necessary).

5 WORK SCHEDULE

The Committee believes the complete evaluation of this issue may extend over 30 months or more. The State expects to have a contract awarded by 30 April 2003. The contractor may begin reviewing documents already filed with the Commission or in the Committee's possession as soon as the contract is awarded.

6 INFORMATION REQUIRED FROM OFFEROR

- 6.1 Statement of Experience - Summarize the offeror's prior experience relating to areas addressed in the RFP and others suggested by the offeror.
- 6.2 Statement of Tasks - Describe the major tasks for addressing the issues and achieving the project objectives.
- 6.3 Work Plan - Include a work plan describing the steps that will be taken to complete each major task.
- 6.4 Project Schedule - Include a project schedule showing the amount of time in hours per person devoted to each major task.
- 6.5 Progress Report - Describe the procedures that will be used to keep the Committee informed of progress toward completing the project.
- 6.6 Personnel - List the names and professional qualifications of each person who will be performing work. State the specific tasks to which each person will be assigned.
- 6.7 Potential Conflicts of Interest - Identify any potential conflict of interest or the appearance of a conflict that might arise during the course of the project. If no conflicts are expected, include a statement to that effect in the proposal.
- 6.8 Cost and Price Analysis - Information requested in this section will be used to evaluate the reasonableness of the quotation and is for internal use. The format below is to be used. The offeror must estimate the hours and costs allocated to each task area of the project.
 - 6.8.1 Personnel costs
 - 6.8.1.1 Category (eg project manager, senior analyst, etc).
 - 6.8.1.2 Estimated hours for each task area.
 - 6.8.1.3 Rate per hour.
 - 6.8.1.4 Total personnel costs.
 - 6.8.2 Cost of supplies and materials (itemized).
 - 6.8.3 Other firm costs (itemized).
 - 6.8.4 Offeror should include the cost of two trips to Salt Lake City, Utah, in the proposal: one trip to allow for a conference with Committee staff or to review Company documents, and one to testify at hearings.
 - 6.8.5 Total costs of completing the project.

- 6.9 A contractor(s) must be able to use Microsoft Word and Excel, and have fax capability. Internet access and the ability to communicate and transmit documents via E-mail are also necessary. The offeror's technology capabilities in these respects must also be addressed in the proposal.

7 GENERAL INFORMATION

7.1 Submission of Proposals

Seven (7) copies of the proposal are to be submitted on or before 3:00pm on 1 April 2003:

for Fed-Ex, UPS or other express service to street address:

Utah Division of Purchasing
3150 State Office Building, Capitol Hill
Salt Lake City, Utah 84114

or for US Postal Service, to PO Box address:

Utah Division of Purchasing
PO Box 141061
Salt Lake City Utah 84114-1061

Proposals may be mailed or hand-delivered. They must be:

identified as a response to this RFP;

typewritten and legible; and

submitted in seven copies with no other distribution of copies by offeror.

7.2 Receipt and Registration of Proposals

Proposals received will be opened at 3:00pm on 1 April 2003, at the Utah Division of Purchasing, 3150 State Office Building, Capitol Hill, Salt Lake City, UT 84114. Interested parties may attend the formal proposal opening but no additional verbal or written input will be allowed at the proposal opening. Proposals not received by the deadline, whether en route, in the mail, or at other locations in the State Office Building, will be late and therefore will not be considered.

All proposals become the property of the State of Utah upon receipt and will not be returned to offeror(s). The State shall have the right to use all ideas or adaptations of ideas contained in any proposal. Acceptance or rejection of the proposal shall not affect this right.

7.3 Amendments to Proposals

Amendments to proposals will be accepted provided they reach the Division of Purchasing on or before 3:00pm on 1 April 2003.

7.4 Funding Period

From 14 April 2003, to 31 December 2005, and may be renewable at the discretion of the Committee as required to complete the project.

7.5 Eligibility

A proposal may be submitted by any person or organization, public or private, nonprofit or for profit.

7.6 Client and Contact Person

The Committee of Consumer Services is the Contractor's principal client and controls the project. The contact on the Committee's staff for answers to questions about this RFP is:

Kelly Francone	Utility Analyst
Telephone	(801) 530-6647
E-mail	kfrancone@utah.gov
Mailing address	PO Box 146782, SLC, Utah 84114-6782
Street Address	160 East 300 South, Ste 227, SLC, Utah, 84111

7.7 Evaluation of Proposals

Following the submission deadline, proposals will be evaluated by members of the Committee's staff. Evaluation will be on the basis of the stated evaluation criteria and no other factors will be considered in awarding a contract.

7.8 Conditions of Proposals

All costs, terms and conditions contained in the proposal shall remain fixed and valid for 90 days after the closing date. The proposal shall be signed by a person or persons legally authorized to bind the offeror to its provisions.

7.9 Proposal Cost

All costs associated with developing, preparing and submitting a proposal, attending interviews or other activities prior to a contract being awarded, are entirely the responsibility of the offeror and shall not be reimbursed in any manner by the State of Utah.

7.10 Proposal Confidentiality

7.10.1 There shall be no press release pertaining to this RFP or the acceptance and contract award without prior written approval from the Committee.

7.10.2 The names of the offerors become public information.

7.10.3 The winning offeror's proposal(s) is open to public inspection for a period of 90 days from contract award date.

7.11 Award

7.11.1 Issuance of this RFP in no way obligates the Committee to award a contract. The Committee reserves the right to reject any and all proposals or withdraw this request at any time. Award of a contract will not necessarily be made to the lowest offeror, but will be made in accordance with the evaluation criteria.

7.11.2 If only one proposal is received in response to this RFP, the Committee may either recommend the proposal for award or reissue the RFP for the purpose of obtaining additional proposals. Factors not specified in a proposal shall not be considered in determining the award.

7.11.3 Award will be made to the offeror(s) whose proposal(s) is (are) determined to be the most advantageous to the State, taking into consideration all factors and evaluation criteria set forth in this RFP.

7.11.4 The Committee reserves the right to award a contract without further discussion of proposals received. It is, therefore, important that each proposal be submitted in the manner most favorable to the offeror.

8 PROPOSAL EVALUATION CRITERIA

8.1 Cost proposal (30 points) - A complete and detailed budget proposal must identify all anticipated costs in two areas:

personnel; and

non-personnel (telephone, mail, copying, etc).

8.2 Soundness, originality and feasibility of the approach to be utilized including data collection techniques, data analysis methods, project management, and planning and prioritization of study steps. (20 points)

- 8.3 Prior experience (20 points) - Demonstrated experience and ability of the individual staff members assigned to the project to perform the proposed work, particularly the training, experience and availability of the project manager and of the individuals assigned to the most complex areas of the project. Experts must have testified on each of the areas they are offering on during the last five years.
- 8.4 Understanding of the problem and a description of the methodologies to be used in meeting the scope of work. (15 points)
- 8.5 Expertise of personnel - educational background (accounting, economic, engineering), work experience (utility companies, regulatory agencies, consulting firms, university teaching positions), etc. (15 points)

9 ORAL PRESENTATIONS

- 9.1 Offerors may be invited to an oral presentation with Committee staff, either by traveling to Salt Lake City, Utah, or via conference call.
- 9.2 Formal presentations are neither required nor desired.
- 9.3 The agenda would typically include discussions of scope, methods, project management, policies, relevant experience, etc.
- 9.4 Costs associated with an oral presentation are not a billable item.

10 SUCCESSFUL PROPOSAL

The Committee and the successful offeror will sign a contract spelling out the rights and obligations of each of the parties. Costs associated with contract preparation are not billable items.

ATTACHMENT A: STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.
4. **RECORDS ADMINISTRATION:** The CONTRACTOR shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the CONTRACTOR for costs authorized by this contract. These records shall be retained by the CONTRACTOR for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The CONTRACTOR agrees to allow STATE and Federal auditors, and STATE Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** CONTRACTOR represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The CONTRACTOR shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the STATE to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the STATE, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the CONTRACTOR by the STATE. The CONTRACTOR shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the STATE for these contract services. Persons employed by the STATE and acting under the direction of the STATE shall not be deemed to be employees or agents of the CONTRACTOR.
7. **INDEMNITY CLAUSE:** The CONTRACTOR agrees to indemnify, save harmless, and release the STATE OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the CONTRACTOR'S officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.
8. **EQUAL OPPORTUNITY CLAUSE:** The CONTRACTOR agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the CONTRACTOR agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the parties hereto, and attached to the original signed copy of the contract.
11. **DEBARMENT:** The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by the STATE.
12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
13. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
14. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgement to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.
15. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, as to distribution of copies, and Contractor gives the STATE express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

(Revision date: Apr 24, 2002)

SPECIAL TERMS AND CONDITIONS

- 1 PROPOSAL CONTENT: The content of the Contractor's proposal and the budget negotiated between the Contractor and the Committee shall be included in this Contract.
- 2 CONTRACT COMPLIANCE: To assure compliance with the Contract, the Committee or its representative(s) will at all times, during normal business hours, have the right to enter into the Contractor's premises or other places where work under the Contract is being performed, including the utility company's premises, to monitor or otherwise evaluate work performed or being performed.
- 3 COMPLETION: The Contractor agrees that, for a period of two years from the completion of this project and upon the request of the Committee, it shall testify, and it shall provide advice and support regarding the project so that Committee staff may testify, in any proceeding or action to which the Committee is a party. The parties agree that the Contractor shall be compensated for any such advice and support at the contracted rates without any surcharge. Such charges shall be additional to the amounts specified herein. The Contractor's obligation under this paragraph shall survive any termination of this Contract.
- 4 SUBCONTRACTING: The Contractor is prohibited from assigning or subcontracting this Contract, or any part hereof, except as provided in its proposal, without the express written consent of the Committee. Any assignee or subcontractor is subject to the same conditions in this Contract as the Contractor. The Committee may require the removal from work on the Contract of any assignee or subcontractor it deems incompetent, careless, insubordinate, or otherwise unacceptable, or whose continued employment on the Contract it deems contrary to the public interest or not in the best interest of the State of Utah.
- 5 STAFF CHANGES: The Contractor agrees that changes in the identity or allocation of professional staff assigned to the project by the Contractor may be made only upon the written consent of the Committee.
- 6 PERFORMANCE STANDARDS: If the Committee finds the detailed work or staffing deficient for any reason, and those deficiencies cannot be corrected to the satisfaction of the Committee, the Contract will be terminated and the Contractor will be paid for whatever work was reasonable and necessary. The Contractor shall notify the Committee immediately in the event unforeseen circumstances cause, or are likely to cause, delays in performance that would require schedule adjustments. However, this is a not-to-exceed contract, and the Committee, with a strong negative assumption, will carefully review any requests for additional calendar time and/or monies.
- 7 ACCEPTED STANDARDS: The Contractor shall conduct the project in accordance with generally accepted standards. The Contractor shall perform its services in a thorough and professional manner and will be deemed to have breached the Contract when any deficiencies in its services are attributable to its failure to comply with generally accepted standards.
- 8 CONDUCT: While in or on the utility company's property, the Contractor agrees to abide by the company's operating and safety rules and procedures; plan, arrange and conduct its work so there will be no interference or interruption with the continuous operation of the company's business, other than those normally associated with the conduct of a project of this magnitude; and maintain the company's working and office areas in a neat and workmanlike manner.
- 9 CONFIDENTIALITY: The Contractor understands that the work done under this Contract is for the Committee and is done at the Committee's direction; that all the work under this Contract, including, but not limited to, all communications, whether written or oral, between it and the Committee, is confidential and privileged; and that the Contractor will not reveal the contents thereof to any person, except as authorized by the Committee or as required by law. The Contractor shall not release or disclose any draft, working papers, finding, or recommendation made by the Contractor, except as

may otherwise be required by law, and except the Contractor's testimony before the Public Service Commission of Utah, otherwise than to the Committee. Any working papers, data, documents, studies, reports, and other writings which the Contractor prepares or generates in connection with its work under this Contract shall be the property of the Committee and shall be delivered to the Committee upon completion of the Contractor's services under this Contract or upon request. The Committee shall have the right to use any of these materials in furtherance of its advocacy responsibilities in accordance with applicable provisions of law. These obligations and understandings will survive termination of this Contract.

- 10 COMPENSATION: The Committee shall compensate the Contractor for all work and services performed by the Contractor or its approved subcontractors under this Contract on the following basis:
 - 10.1 The Contractor's compensation for professional fees and its reimbursement for incidental and other expenses shall not exceed the total Contract amount.
 - 10.2 The Committee shall compensate the Contractor for the necessary and reasonable time spent by each of its professional and support staff at the rates set forth in the Contract and as amended by subsequent negotiation and agreement. The Contractor is responsible for compensation of its employees including income tax and FICA withholding, workman's compensation, public liability insurance, etc. The Contractor's employees are not entitled to compensation or benefits of any kind from the State of Utah or the utility.
 - 10.3 The Committee shall also reimburse the Contractor, at cost, for necessary and reasonable incidental expenses directly related to the project and approved as reasonable, necessary and correct. Travel expenses have the following conditions:
 - 10.3.1 Food expenses are limited to \$38.00 per day or actual expenses whichever is less. Individually, reimbursement for meals will be limited to \$9.00 for breakfast, \$11.00 for lunch, and \$18.00 for dinner.
 - 10.3.2 Reimbursement for lodging will be limited to the applicable State of Utah government rates. The limit for Salt Lake City is \$68.00 per night. If accommodation is unavailable within these limits, the Contractor may make reservations through the Utah State Travel Office, in which case reimbursement will be limited to the lowest rate obtainable by the Travel Office.
 - 10.3.2 All air travel will be booked through the Utah State Travel Office unless the Contractor can obtain an airfare at a more reasonable rate by other means. In this case, the Travel Office must be asked to document the lowest rate it can obtain prior to the Contractor making final arrangements.
 - 10.4 The Contractor will submit detailed invoices to the Committee no later than the fifteenth day of each calendar month for all work done and expenses incurred during the previous calendar month. Each invoice shall be a detailed accounting of the hours worked by each person, of each day worked, and of other direct and indirect expenses broken down by cost element (eg lodging, meals, transportation, photocopying, data and word processing, postage, etc) including dates, time periods, quantities, and hours as applicable. The Contractor shall provide detailed time sheets and other records/receipts, such as expense vouchers, lodging receipts and invoices for any claimed expense in excess of \$24.99.
 - 10.5 With each invoice, the Contractor will provide a reconciliation with the original Contract of the work done, time spent and money claimed to date. This shall identify any additional work, not included in the original Contract, already undertaken or proposed, with an estimate of its cost; any work originally intended but which it is proposed not now to undertake, with an estimate of the savings; and the likely impact of such changes on the timetable for the project.

- 10.6 Within fifteen (15) days of receipt, the Committee shall review, verify, and may approve in whole or in part, each invoice for payment. For the purpose of clarifying the Committee's approval of the Contractor's work product (including testimony), this shall mean compliance of those work products with the terms of this Contract and shall not pertain to the independent conclusions and recommendations reached by the Contractor.
- 10.7 Within forty-five (45) days of receipt, the Committee will pay 50 percent of the undisputed amount of approved expenses for each invoice. The 50 percent retention may be released at the discretion of the Committee and will otherwise normally be released upon fulfillment of all contractual obligations. However, the Committee reserves the right to disallow up to 100 percent of the total Contract amount if:
- 10.7.1 for reason(s) the Committee believes to have been within the Contractor's control, testimony is not filed by the date specified;
 - 10.7.2 at the date of filing testimony, a completely-sourced copy, with adequate supporting documentation, has not been submitted to and approved by the Committee; or
 - 10.7.3 for reason(s) the Committee believes to have been within the Contractor's control, one or more members of the Contractor's professional staff, or assignees or subcontractors, fails to be present at hearing(s), or, if present, responds to questions in a manner inconsistent with pre-filed testimony, or otherwise behaves in a manner likely to bring the Committee into disrepute.
- 10.8 The acceptance by the Contractor of final payment hereunder shall operate as a general release to the Committee of all claims arising in connection with this Contract. No payment, final or otherwise, shall operate to release the Contractor from any of its obligations under this Contract.
- 11 **CONTRACT TERMINATION:** The Committee may terminate this Contract in whole or in part, with or without cause, upon ten days' written notice to the Contractor. Upon receipt of said notice, the Contractor shall stop all work specified in the notice and being performed hereunder; shall place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of any continued portion of the work; shall terminate all orders and subcontracts to the extent that they relate to the notice of termination; shall assign to the Committee, in the manner and to the extent directed by the Committee, all right, title, and interest of the Contractor under the orders and subcontracts so terminated; and shall take such actions as the Committee may direct for the protection, preservation, and disposition of property, the title to which the Committee has or may acquire under this Contract.
- 12 **OBLIGATIONS:** The parties hereto shall not be considered in default in the performance of their obligations under this Contract if said performance is prevented or delayed by any cause beyond the reasonable control of the party. Such causes – including, but not limited to, acts of God, acts of governmental authority, floods, strikes, explosions and riots - shall not relieve any party of liability in the event the party fails to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch. In the event that force majeure prevents or delays a party's performance, it shall promptly inform the other party of it in writing.